

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILTON and ELAINE GOODSTEIN, et al. : CIVIL ACTION
:
v. :
:
STEVEN L. ETTENGER : NO. 06-0317

ORDER - MEMORANDUM

AND NOW, this 30th day of October, 2006, a ruling on “Plaintiffs’ Motion for Partial Summary Judgment as to Complaint, Count I” is deferred, Fed. R. Civ. P. 56(f)¹, and defendant is ordered to file affidavits or other materials identifying “specific facts showing that there is a genuine issue for trial” by Friday, November 3, 2006. Fed. R. Civ. P. 56(e).² Defendant is further ordered to serve upon plaintiffs’ counsel financial and employment data as agreed by the parties by Monday, October 30, 2006.

This is a breach of contract action. The complaint alleges that, beginning in October 2002 and continuing through 2003, plaintiffs lent defendant \$500,000, memorialized in written loan agreements. Complaint, ¶¶ 1, 7. Despite demand, defendant has allegedly not made repayment and is in breach of the loan agreements by defendant. Id., Count I, ¶¶ 16-17.

¹ “The district courts have a duty under Rule 56(f) to ensure that the parties have been given a reasonable opportunity to make their record complete before ruling on a motion for summary judgment.” Volume 11 Moore’s Federal Practice, § 56.10[8][a] (Matthew Bender 3d ed.).

² “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.” Fed. R. Civ. P. 56(e) (emphasis added).

On August 14, 2006, plaintiffs filed this motion for partial summary judgment, supported by affidavits and exhibits, including copies of checks, loan agreements, handwritten logs of payments on account, and correspondence to defendant demanding repayment of the loans. Defendants' motion, Exhibits "A" through "E." On September 7, 2006, defendant filed his response to plaintiffs' motion: (1) the motion was premature because discovery had not yet been begun³; and (2) the denials included in defendant's answer (filed August 18, 2006) compelled denial of plaintiffs' motion. Defendant's response, at 1.

Defendant's response is not accompanied by affidavit or other Rule 56 matter and, as such, does not comply with Rule 56(e) and the requirements of Celotex Corp v. Catret, 477 U.S. 317, 324 (1986). A party having the burden of proof at trial must, in response to a properly supported summary judgment motion "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Otherwise, the motion, if self-supported, will be granted.

BY THE COURT:

/s/ Edmund V. Ludwig
Edmund V. Ludwig, J.

³ A Rule 56 motion may be filed by a plaintiff "at any time after the expiration of 20 days from the commencement of the action," and need not await discovery. Fed. R. Civ. P. 56(a).